

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED

2002 FEB 21 AM 11:44
RICHARD R. ROOKER, CLERK

STATE OF TENNESSEE,

Petitioner,

v.

MCI WORLDCOM COMMUNICATIONS,
INC., a foreign corporation,

Respondent.

No. 02C503

Petition

Paul G. Summers, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Insurance and Commerce (hereinafter "the Division") and the Attorney General, acting pursuant to the Act, have investigated certain acts and practices of the MCI WorldCom Communications, Inc., a Georgia corporation with its principal place of business in Clinton, Mississippi (hereinafter, "Respondent"). Upon completion of such investigation, the Division has determined that certain of Respondent's acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair or deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-101 *et seq.*

2. Based upon their investigation of Respondent, the Division and the Attorney General allege the following:

(A) Respondent offers and sells to Tennessee consumers residential wireline long distance service;

(B) Respondent markets its service through television advertisements, direct mail, print advertisements, internet websites and telemarketing.

(C) Some of the marketing used by Respondent does not clearly and conspicuously disclose all the material terms of the rates charged for the service plans offered by Respondent.

3. Respondent neither admits nor denies liability for the allegations of Paragraph 2 (A-C).

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

5. The Attorney General entered into negotiations with Respondent and the parties have agreed to, and the Division has approved, the attached Assurance of Voluntary Compliance.

6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays


1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul G. Summers", is written over a horizontal line.

PAUL G. SUMMERS
Attorney General and Reporter
B.P.R. 6285



TIMOTHY C. PHILLIPS

Assistant Attorney General

B.P.R. No. 12751

Office of the Attorney General

Consumer Advocate & Protection Division

Post Office Box 20207

Nashville, Tennessee 37202-0207


(615) 741-3533

Certificate of Service

The undersigned certifies that on February 21, 2002 an exact copy of the Petition, Agreed Order and Assurance of Voluntary Compliance filed in this matter have been mailed, U.S. Postage prepaid, to:

Thomas O'Neil, III
Chief Legal Counsel
Law and Public Policy
WORLD COM
1133 19th Street NW
Washington, DC 20036
Counsel for Respondent
Telephone No.: (202) 736-6133

Jon E. Hastings, Esq.
Boult, Cummings, et al.
414 Union Street
Suite 1600
Post Office Box 198062
Nashville, TN 37219-8062


TIMOTHY C. PHILLIPS
Assistant Attorney General
(615)741-3533

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STATE OF TENNESSEE,

Petitioner,

v.

MCI WORLDCOM COMMUNICATIONS,
INC., a foreign corporation,

Respondent.

No. 020503

AGREED ORDER

This cause came to be heard on the State of Tennessee's Petition and the parties' Assurance of Voluntary Compliance, and the Court is of the opinion that said Assurance of Voluntary Compliance should be approved. It is therefore

ORDERED, ADJUDGED, and DECREED that the Assurance of Voluntary Compliance annexed hereto as Exhibit A and incorporated herein by reference, and hereby made a part of this Order be, and the same hereby is approved, and it is further

ORDERED, ADJUDGED, and DECREED that Respondent shall comply with the terms thereof unless rescinded by the parties or modified by this Court for good cause shown.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED as follows:

(A) Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Agreed Order and the Assurance is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Agreed Order and Assurance, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Agreed Order and Assurance is solely in the Circuit Court of Davidson County,

(B) As required in the Assurance and Agreed Order, Respondent shall pay to the

Attorneys General of the states the amount of Five Hundred Thousand Dollars (\$500,000.00). Of this sum, the State of Tennessee shall receive \$23,333.33. The payment to the State of Tennessee shall be used for the purposes set forth as follows:

- (1) Respondent shall pay the sum of Fifteen Thousand Three Hundred Thirty Three and 33/100 Dollars (\$15,333.33) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General.
- (2) Respondent shall pay the sum of Seven Thousand and 00/100 Dollars (\$7,000.00) to the State of Tennessee as and for a payment to the General Fund of the state of Tennessee.
- (3) Respondent shall pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the Director of the Division of Consumer Affairs to fund a consumer education project. That project shall be selected at the Director of the Division of Consumer Affairs' sole discretion.

(C) Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition, Assurance and Agreed Order.

(D) This Agreed Order and the Assurance shall only be enforceable by the parties to this action.

(E) The terms of this Assurance and Agreed Order shall include the following as provided for in Tennessee law:

- (1) Pursuant to Tenn. Code Ann. § 47-18-109, nothing in this Assurance or Agreed Order shall be construed to affect any private right of action that a consumer may hold against the Respondent.
- (2) Respondent understands that upon execution and filing of this Agreed Order and Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.
- (3) Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.
- (4) Pursuant to Tenn. Code Ann. § 47-18-107(c), an Assurance of Voluntary Compliance shall not be considered an admission of prior violation of the Tennessee Consumer Protection Act.
- (5) Nothing in this Agreed Order or Assurance constitutes an agreement by the State of Tennessee concerning any characterization of the amounts paid hereunder for the purposes of any proceeding under the Internal Revenue Code or any state tax laws.
- (6) Paragraphs 5 through 18 of the Assurance attached as Exhibit A constitute the

- (7) As respects the State of Tennessee paragraph 33 of the Assurance attached as Exhibit A is deleted and the following language is substituted so as to read as follows:

As consideration for the injunctive relief agreed to herein, if the Attorney General determines that Defendant has failed to comply with any of the terms of this Order, and if in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the State of Tennessee, the Attorney General will notify the Defendant in writing of such failure to comply and Defendant shall then have fifteen (15) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination. The response shall include an affidavit or correspondence from legal counsel containing, at a minimum:

- (A) a statement that Defendant is in full compliance with the Order; or*
- (B) a detailed explanation of how the alleged violation(s) occurred; and*
 - (i) a statement that the alleged breach has been cured and how; or*
 - (ii) a statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (1) Defendant has begun to take corrective action to cure the breach, (2) Defendant is pursuing such corrective action with due and reasonable diligence, and (3) Defendant has provided the Attorney General with a detailed and reasonable time table for curing the breach.*

Nothing herein shall prevent the Attorney General from agreeing in writing to provide the Defendant with additional time beyond the fifteen (15) business day period to respond to the notice.

Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Order after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Order. Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee.

The State represents that it will seek enforcement of the provisions of this Judgment with due regard for fairness.

- (F) Nothing in this Assurance or Agreed Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

- (G) All costs associated with the filing and distribution of this Agreed Order, Assurance and Petition and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-


18-116. Costs shall be taxed to Respondent.

IT IS SO ORDERED.



CIRCUIT COURT JUDGE

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE STATE:


TIMOTHY C. PHILLIPS
Assistant Attorney General
B.P.R. No. 012751
Consumer Advocate and Protection Division
Office of the Attorney General
425 Fifth Avenue North, 2nd Floor
Nashville, Tennessee 37243-0491
(615) 741-3533

FOR RESPONDENT:


Jon E. Hastings

B.P.R. No. 010470
Boul, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
Nashville, TN 37219
615-252-2306


Thomas O'Neil, III

Senior Vice President and General Counsel
William P. Donovan, Jr.
Senior Counsel
MCI WORLDCOM Communications, Inc.
1133 19th Street NW
Washington, DC 20036
Telephone No.: (202) 736-6990

I hereby certify that this is a true copy
of original instrument filed in my office
this 21 day of Feb 2002
By RICHARD F. BOOKER Clerk
Deputy Clerk

EXHIBIT A

IN THE MATTER OF
MCI WORLDCOM
COMMUNICATIONS, INC.

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FILED
2002 FEB 21 AM 11:45
RICHARD R. ROOPER, CLERK
D.C.

ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance¹ ("Assurance") is entered into by the Attorneys General² ("Attorneys General") of the States of Arkansas, District of Columbia, Georgia, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Vermont, and Wisconsin ("Participating States").
2. MCI WORLDCOM Communications, Inc., ("MCI WORLDCOM") is a corporation incorporated under the laws of the State of Georgia with its principal place of business at Clinton, Mississippi.

BACKGROUND

3. MCI WORLDCOM is a telecommunications carrier providing telecommunications products and services to consumers nationwide.
4. Beginning in or about August, 1999, the Attorneys General reviewed MCI WORLDCOM's

¹This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

²The District of Columbia is represented by its Corporation Counsel. Of the states, listed, Georgia is not represented by its Attorney General. With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. Section 10-1-390, is statutorily authorized to undertake consumer protection functions, including the acceptance of Assurances of Voluntary Compliance for the State of Georgia. The term "Attorneys General" as used herein, as it pertains to Georgia, refers to the Administrator of the Fair Business Practices Act of 1975. Tennessee is represented by the Attorney General, but the Tennessee Attorney General's Office enters into this Assurance in conjunction with the Tennessee Division of Consumer Affairs. For simplicity purposes, the entire group will be referred to as the "Attorneys General," and such designation, as it includes District of Columbia, refers to the District of Columbia Corporation Counsel, and as it includes Georgia, refers to the Administrator of the Fair Business Practices Act.

television advertisements for its dial 1 residential wireline long distance service plans. These advertisements were reviewed for compliance with the states' respective consumer protection statutes, as more specifically cited below³. The terms of this Assurance apply to MCI WORLDCOM's long distance service, as defined in paragraph 7 below.

TERMS OF ASSURANCE

A. Definitions

5. A statement is "clear and conspicuous" if it is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. The audio disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for a consumer to read and comprehend

³Arkansas Code Ann. §4-88-101 *et seq.*; District of Columbia Consumer Protection Procedures Act, D.C. Code Ann. §§28-3901, *et seq.*; Georgia Fair Business Practices Act, O.C.G.A. §10-1-390 *et seq.*; Idaho Code §48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Iowa Consumer Fraud Act, Iowa Code §714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; Michigan Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418 (1) *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Mexico Unfair Trade Practices Act, NMSA §57-12-1 *et seq.*, (1978); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. §75-1.1, *et seq.*; North Dakota Century Code (NDCC) Sections 51-15-01, *et seq.*; Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 15 O.S. §§751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 *et seq.*; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, (1994); Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*, (West 1993); Vermont Consumer Fraud Act, 9 V.S.A. § 2451 *et seq.*; and Wisconsin Statutes §§100.18(1) and 100.207

- it. In a print advertisement or promotional material directed to consumers, the disclosure shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- a. There shall be a rebuttable presumption that the disclosures required by paragraph 10 of this Assurance are clear and conspicuous if, in addition to the foregoing, such disclosures comply with the following⁴:
 - i. in an advertisement communicated through an electronic medium (e.g., television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however*, that in any advertisement presented through a solely visual medium or a solely audio medium, the disclosure may be made through the same means in which the ad is presented.
 - b. Disclosure pursuant to paragraph 5(a)(i) creates a rebuttable presumption that the disclosures required by paragraph 10 of this Assurance are clear and conspicuous, and is not a requirement under this Assurance.
6. "Taxes" means amounts that MCI WORLDCOM is required by law to collect directly from phone service consumers. This term does not include fees charged by MCI WORLDCOM to consumers that are based, directly or indirectly, on government imposed costs of doing business, such as the carrier access fee and the federal universal service fee.

⁴If MCI WORLDCOM chooses to advertise using a television banner which travels across the television screen during a television program unrelated to the banner, and the banner contains no audio component, then subsection a. of paragraph 5 of this AVC shall not apply.

7. "Long distance service" means dial 1 residential voice toll service and does not include local exchange service or wireless service.
8. "Mandatory additional fees" means recurring charges and usage charges (including, but not limited to, any required minimum amount of toll charges, monthly service fee charges, carrier access fee and federal universal service fee) that a residential consumer must incur to use the long distance service plan, but does not include taxes.

B. Representations Concerning Rate

9. MCI WORLDCOM shall not misrepresent, in any manner, directly or by implication, the rate of its long distance service.
10. MCI WORLDCOM shall not represent in advertisements the rate of, or the rate of any portion of, any of its long distance service (including, but not limited to, per minute rate claims) unless MCI WORLDCOM discloses clearly and conspicuously the name and amount of all mandatory additional fees, except for the federal universal service fee, either itemized or in total, subject to subparagraph a. of paragraph 12.
11. MCI WORLDCOM shall disclose clearly and conspicuously the existence of the federal universal service fee.

C. Representations Concerning Limitations on Rate

12. MCI WORLDCOM shall not represent in advertisements the rate or the rate of any portion of its long distance service unless it discloses clearly and conspicuously all other material terms and conditions (excluding those set out in paragraphs 10 and 11 of this Assurance),

including, (if applicable) but not limited to:

- a. that in-state rates may be higher, and that additional in-state fees may apply;
 - b. where the rates apply, e.g., state-to-state or in-state;
 - c. when the rates apply, e.g., time or day restrictions;
 - d. in the case of a temporary promotion, the date the temporary promotion will expire;
 - e. the billing method a consumer is required to utilize, if different from the consumer's current billing method, in order to obtain the rate;
 - f. if only one rate component of the calling plan is represented, and the consumer must purchase the complete calling plan, the fact that other rate components of the plan may be higher;
 - g. any requirement that consumers subscribe over the Internet; and
 - h. other services that must be purchased in order to obtain the rate.
13. MCI WORLDCOM shall not misrepresent the times or days during which its stated rate is available.

D. Representations Concerning Rate Comparisons

14. MCI WORLDCOM shall not misrepresent, in any manner, directly or by implication, the basis of any rate comparison or savings claim.
15. MCI WORLDCOM shall disclose clearly and conspicuously the basis of any rate comparison or savings claim by naming the competitor's product or service to which the comparison is made.
16. MCI WORLDCOM shall not compare its rate with the rate at which another seller is offering

any product or service unless both of the following are satisfied:

- a. the other seller's product or service is currently being provided at the represented higher comparative rate; and
 - b. MCI WORLDCOM has not represented, expressly or by implication, that MCI WORLDCOM's long distance service is comparable to the other seller's product or service, unless such is the case. The mere presentation of the rate of another seller's product or service does not necessarily imply that the other seller's product or service is comparable to the advertised long distance service.
17. Where provided for by state law, MCI WORLDCOM shall not represent, directly or by implication, that its long distance service is being offered at a range of rates or at a range of percentage or fractional discounts (e.g., "Save up to 50%") unless the highest rate or lowest discount in the range is disclosed clearly and conspicuously.
18. If MCI WORLDCOM uses the representation "basic rate" or other similar term to make a rate comparison, MCI WORLDCOM shall disclose clearly and conspicuously that the basic rate is a non-discounted rate, if such is the case.

E. Consumer Complaints

19. MCI WORLDCOM shall respond within a reasonable time and in good faith to all consumer complaints or requests for adjustments received by MCI WORLDCOM with respect to the matters set forth in this Assurance on an individual basis.

F. General Provisions

20. This Assurance does not constitute an admission by MCI WORLDCOM that any of its advertising practices are unfair or deceptive or violate any of the respective consumer protection laws of any of the states.
21. MCI WORLDCOM agrees to pay a total of Five Hundred Thousand Dollars (\$500,000.00) to the Attorneys General of the states no later than fifteen (15) days after the effective date of this Assurance for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each state's law at the discretion of each state's Attorney General.
22. The subject matter of this Assurance is advertisements for MCI WORLDCOM's long distance service plans, which advertisements were disseminated prior to the effective date of this Assurance, and anything not relating to or based on the subject matter is not covered by this Assurance. This Assurance: (i) constitutes a complete settlement and release by each of the Attorneys General of all claims and causes of action pursuant to the statutes, rules, and regulations set forth in footnote 3 of this Assurance and relating to or based upon the subject matter of this Assurance, which could have been asserted by them, either individually or collectively, against MCI WORLDCOM or any of its directors, officers, subsidiaries, employees, agents, successors, or assigns prior to the date as of which this Assurance is executed; and (ii) resolves completely and finally the inquiry of the Attorneys General into the subject matter of this Assurance. No Attorney General will make a claim against MCI WORLDCOM or any of its directors, officers, subsidiaries, employees, agents, successors, or assigns pursuant to the statutes, rules, and regulations set forth in footnote 3 of this

Assurance and relating to or based upon the subject matter of this Assurance which occurred prior to the effective date of this Assurance. So long as MCI WORLDCOM complies with this Assurance, no Attorney General will make a claim or institute any proceeding against MCI WORLDCOM or any of its directors, officers, subsidiaries, employees, agents, successors, or assigns pursuant to the statutes, rules, and regulations set forth in footnote 3 of this Assurance and relating to or based upon the subject matter of this Assurance.

23. This Assurance shall be governed by the laws of the above named States, and is subject to court approval in those States whose procedures require court approval. By entering into this Assurance, the Attorneys General and MCI WORLDCOM agree to all such court approvals, provided that there are no modifications to the terms hereof without the express written consent of the parties.
24. MCI WORLDCOM represents that it has fully read and understood this Assurance, that it understands the legal consequences involved in signing the Assurance, and that there are no other representations or agreements not stated in writing herein.
25. MCI WORLDCOM represents and warrants that it is represented by the undersigned legal counsel, that it is fully advised of its legal rights in this matter, and that the person signing below is fully authorized to act on its behalf.
26. This Assurance applies to MCI WORLDCOM and its directors, officers, subsidiaries, employees, agents, successors, and assigns, and each of them.
27. MCI WORLDCOM shall provide a copy of this Assurance and an accurate summary of the material terms of this Assurance to all of those officers and senior managers who have managerial responsibility for the matters subject to the provisions of this Assurance, or other

persons, including without limitation, outside consultants, through whom MCI WORLDCOM may act who have responsibility for the matters subject to this Assurance.

28. This Assurance shall be effective on the date that it is signed by an authorized representative of MCI WORLDCOM.
29. This Assurance contains the entire agreement among the parties. Except as otherwise provided herein, this Assurance shall be modified as to any Participating State only by a written instrument signed by or on behalf of the Attorney General of that state and MCI WORLDCOM. MCI WORLDCOM understands that in some states court approval of any modification will be necessary. To seek a modification of this Assurance, MCI WORLDCOM shall send a written request for modification to the Attorney General of the State or States involved. If more than one Participating State is involved, MCI WORLDCOM also shall send a copy to the Attorney General of the State of Illinois, and the Attorney General of the State of Illinois shall coordinate the States' response to MCI WORLDCOM's request for modification. The States shall respond within 30 days of receiving such request as follows:
 - a. If any Participating State, or the Attorney General thereof, or any agency of a Participating State charged with the administration of the State's consumer protection statutes, subsequently enacts or promulgates any legislation, rule, or regulation with respect to the subject matter of this Assurance or if the applicable law of any Participating State shall otherwise change so as to be inconsistent with any provision of this Assurance, the affected Participating State shall agree to modify such provision to the extent necessary to eliminate such inconsistency.

- b. If MCI WORLDCOM requests modification of this Assurance for any reason other than as set forth in subparagraph (a) above, the Participating States shall give such petition reasonable consideration.
 - c. At the conclusion of the 30-day period referenced above, MCI WORLDCOM reserves all rights to pursue any legal or equitable remedies that may be available to it.
30. Nothing contained in this Assurance shall be construed to deprive any consumer or other person or entity of any private right under the law.

G. Continuing Jurisdiction

31. Within thirty (30) days of a written request by the Attorneys General, MCI WORLDCOM shall provide to the Attorneys General records and documents as the Attorneys General shall from time to time determine are necessary to ensure compliance with this Assurance.
32. Jurisdiction is retained by this Court for the purpose of enforcing this Assurance.
33. If any Participating State believes that MCI WORLDCOM is in violation of its respective Assurance, it must provide to MCI WORLDCOM written notice at least 15 days before the state files a judicial request for relief to enforce this Assurance.

In the Matter of MCI WORLDCOM Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

MCI WORLDCOM Communications, Inc.

By:  _____

Thomas F. O'Neil III
Senior Vice President
General Counsel

Date: 1/17/02

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

MARK PRYOR
Attorney General

By: 

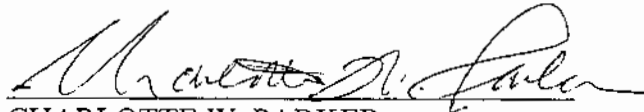
BRIAN G. BROOKS
Senior Assistant Attorney General

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

FOR THE DISTRICT OF COLUMBIA:

ROBERT R. RIGSBY
Corporation Counsel

SHARON STYLES-ANDERSON
Senior Deputy Corporation Counsel
Public Protection and Enforcement



CHARLOTTE W. PARKER
Acting Deputy Corporation Counsel
Civil Division



BENNETT RUSHKOFF
Senior Counsel
Office of the Corporation Counsel
441 4th Street, N.W., Suite 450-N
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(202) 727-3500 phone
(202) 727-6546 fax

Attorneys for the District of Columbia

Dated: January 8, 2002

Assurance of Voluntary Compliance

In the Matter of:

MCI WORLDCOM COMMUNICATIONS, INC.

Dated: January 8, 2002

BARRY W. REID
Administrator,
Georgia's Fair Business Practices Act, and
Governor's Office of Consumer Affairs


By: *Keelin M. Culbreath*
Keelin M. Culbreath
Staff Attorney
Consumers' Utility Counsel Division
Georgia State Bar Number 200195

Governor's Office of Consumer Affairs
Consumers' Utility Counsel Division
47 Trinity Avenue, SW
Suite 414-H
Atlanta, Georgia 30334
404-656-4474
Fax 404-651-9394

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

ALAN G. LANCE
Attorney General of Idaho

By:


BRETT DELANGE
Deputy Attorney General

Date: 1/14/02

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

JAMES E. RYAN
Attorney General of Illinois

By: 

DEBORAH HAGAN
Assistant Attorney General


By: 

ELIZABETH BLACKSTON
Assistant Attorney General

Date: *January 15, 2002*

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

THOMAS J. MILLER
Attorney General of Iowa

By: 
BENJAMIN E. BELLUS
Assistant Attorney General

Date: January 4, 2002

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

STATE OF KANSAS

By: Carla J. Stovall
CARLA J. STOVALL, #11433
Attorney General
John W. Campbell #10349
Deputy Attorney General

By: Kristy L. Hiebert
Kristy L. Hiebert, #14716
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612-1597
(785) 296-3751

Date: 1/8/02

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

By: William D. Gruhn
WILLIAM D. GRUHN
Assistant Attorney General

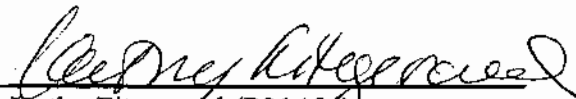
Date: January 8, 2002

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

JENNIFER MULHERN GRANHOLM
Attorney General of Michigan

Date: January 8, 2002

BY:

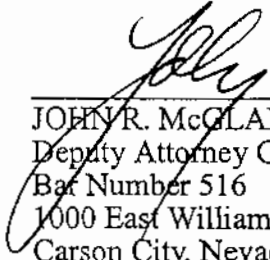

Kathy Fitzgerald (P31454)

Assistant Attorney General
Department of Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, Michigan 48909
(517) 335-0855

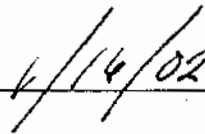
In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLAINT

FRANKIE SUE DEL PAPA
Attorney General of Nevada

By: _____


JOHN R. McGLAMERY
Deputy Attorney General
Bar Number 516
1000 East William Street, Suite 209
Carson City, Nevada 89701
(775) 687-6300 ext. 238


Dated: _____



In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

PATRICIA A. MADRID
Attorney General of New Mexico

By:


RICHARD B. WORD
Assistant Attorney General

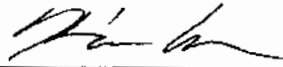
Date:

January 8, 2002

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

ROY COOPER
Attorney General of North Carolina

By:



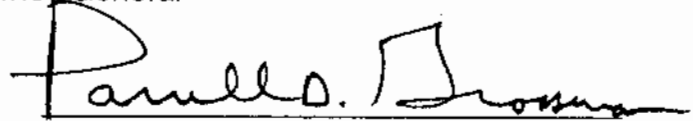
KEVIN L. ANDERSON
Assistant Attorney General

Date: January 9, 2002

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

State of North Dakota
Wayne Stenehjem
Attorney General

By:

A handwritten signature in black ink, appearing to read "Parrell D. Grossman", written over a horizontal line.


Parrell D. Grossman, ID No. 04684
Assistant Attorney General
Director, Consumer Protection &
Antitrust Div.
Office of Attorney General
600 E Boulevard Ave Dept. 125
Bismarck, ND 58505-0040
(701) 328-2811

Date: January 4, 2002

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

BETTY D. MONTGOMERY
Attorney General of Ohio

By:




MICHAEL S. ZIEGLER
Assistant Attorney General
Consumer Protection Section

Date: January 7, 2002

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

W.A. DREW EDMONDSON
Attorney General of Oklahoma

By:


JANE F. WHEELER
Assistant Attorney General

Date: January 4, 2002

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED this ____ day of
_____, 2002

Circuit Court Judge

ACCEPTANCE OF DOJ

Accepted this 7 of January, 2002.

HARDY MYERS
Attorney General of Oregon



THOMAS K. ELDEN #79036

Assistant Attorney General
(Appearance in Oregon Only)

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

D. MICHAEL FISHER
ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA

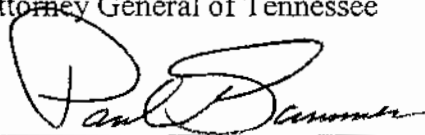
FRANK T. DONAGHUE
CHIEF DEPUTY ATTORNEY GENERAL

BY: E. Barry Creamy
E. BARRY CREAMY
SENIOR DEPUTY ATTORNEY GENERAL

DATE: January 9, 2002

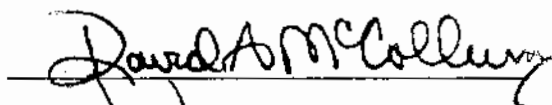
In the matter of MCI Worldcom Communications
ASSURANCE OF VOLUNTARY COMPLIANCE

PAUL G. SUMMERS
Attorney General of Tennessee



Date: 1/15/02

DAVID A. McCOLLUM
Director
Tennessee Division of Consumer Affairs



Date: 1/15/02


Attorneys for the State of Texas,

JOHN CORNYN
Attorney General of Texas

HOWARD G. BALDWIN, JR.
First Assistant Attorney General


JEFFREY S. BOYD
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division


D. ESTHER CHAVEZ
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Austin, Texas 78711
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In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

WILLIAM H. SORRELL
Attorney General of Vermont

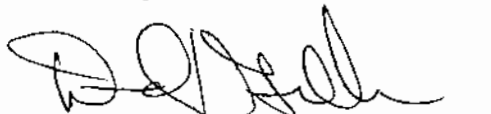
By: 
Elliot Burg
Assistant Attorney General

Date: 1/4/02

In the Matter of MCI Worldcom Communications, Inc.
ASSURANCE OF VOLUNTARY COMPLIANCE

JAMES E. DOYLE
Attorney General of Wisconsin

By:

A handwritten signature in black ink, appearing to read "D. J. Gilles", is written over a horizontal line.

DAVID J. GILLES
Assistant Attorney General

Date: January 4, 2002

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,

Plaintiff,

v.

MCI WORLDCOM
Communications, Inc., a foreign
corporation,

Respondent.

No. 99-3293-I

FILED
1999 NOV 16 AM 10:43
J.C. & M.
DAVIDSON COUNTY CT.

ASSURANCE OF VOLUNTARY COMPLIANCE

INTRODUCTION

1. Pursuant to the provisions of their respective state laws,¹ the Attorneys General of the States of Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Iowa, Kansas, Maryland, Missouri, Nevada, New Jersey, New York, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont and Wisconsin (collectively the "Participating States" or the "Attorneys General") caused an inquiry to be made into certain billing practices of MCI Telecommunications Corporation ("MCIT"), the predecessor to respondent MCI WORLDCOM Communications, Inc. ("MWCC"). MWCC is a Delaware corporation which provides a broad range of communications services, including long distance telecommunications services in each of the Participating States. The Participating States and MWCC will be collectively referred to herein as "the Parties." The Parties have agreed to resolve the issues during the inquiry by entering into this Assurance of Voluntary Compliance ("AVC").

¹ Ariz. Rev. Stat. Ann. §§44-1521 *et seq.*; Arkansas Ann. §4-88-101 *et seq.*; California Unfair Competition Act and False Advertising Act, Ca. Bus. & Prof. Code §§17500 *et seq.*; Colorado Consumer Protection Act, C.R.S. §6-1-101 *et seq.*; Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a *et seq.*; Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501-201 *et seq.* (1995); Idaho Consumer Protection Act, Idaho Code §48-601 *et seq.*; Iowa Consumer Fraud Act, Iowa Code Section 714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated §13-101 *et seq.*; Missouri Merchandising Practices Act, §§407.010 *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; N.Y. Gen. Bus. Law §§349 & 350 and Executive Law §63(12); New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57-12-1 *et seq.*; North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. §75-1.1 (1994); Ohio Rev. Code Ann. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 150-5 §§751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1 *et seq.*; Rhode Island Unfair Trade Practice and Consumer Protection Act, R.I. Gen. Laws §6-13.1-1 *et seq.*; Tennessee Consumer Protection Act, Code Ann. §47-18-101 *et seq.* (1994); Texas Deceptive Trade Practices and Consumer

BACKGROUND

2. Historically, Local Exchange Carriers ("LECs") have been authorized by the Federal Communications Commission ("FCC" or the "Commission") to collect from long distance providers, such as MWCC, charges for use of their telephone lines. Long distance providers require the use of LEC lines to connect from the calling and receiving parties' lines to the long distance carrier's lines, or points of presence. LECs traditionally billed long distance companies on a per-minute access fee basis for this use. Pursuant to an Order entered on or about May 16, 1997,² the FCC, beginning in January 1998, altered the method by which LECs charge long distance providers for these lines. Specifically, for the first time, the FCC allowed LECs to charge long distance companies, such as MWCC, a Presubscribed Interexchange Carrier Charge ("PICC") for use of the LECs' telephone lines on a per-line basis. At the same time, the FCC lowered the allowable per-minute access charge that the LECs had previously charged long distance companies. According to the FCC, increases in per-line and other charges (such as the PICC) paid by the long distance companies were largely offset by reductions in the per-minute charges paid by the long distance companies to the LECs.

3. In January 1998, when the FCC began allowing LECs to charge long distance companies the PICC, the Commission capped the amount LECs may collect for this charge at \$0.53 per month for a primary line,³ \$1.50 per month for non-primary residential lines,⁴ and \$2.75 per month for a multi-line business line.⁵ The PICC is not a tax or other government mandated charge. The FCC has not required long distance companies to add the PICC to customer⁶ telephone bills.

4. Starting in January 1998, MWCC initiated and billed its customers a new self-described charge called a "National Access Fee" (sometimes referred to as "NAF"). For residential customers, MWCC established its "National Access Fee" at \$1.07 per MWCC account. For small businesses, MWCC determined the NAF by multiplying the business's total MWCC invoice by a percentage. For small businesses whose bills were between \$0 and \$25,

² In the Matter of Access Charge Reform, et al., Released May 16, 1997, 12 F.C.C.R. 15982 Red. 15982 (hereinafter the "Order").

³ "Primary Line" is defined as the principal telephone line of a residence or a single-line business line.

⁴ "Non-Primary Line" is defined as any telephone line a residence may have in excess of, or in addition to, the primary telephone line.

⁵ A "Multi-Line Business Line" is defined as any telephone line a business may have in excess of, or in addition to, the primary telephone line.

⁶ "Customer" is defined as any person or business entity that consumes telecommunications products from MWCC.

MCIT multiplied the bill by 30% to determine the NAF. For businesses whose bills were between \$25 and \$100, MWCC multiplied the bill by 27%; for bills between \$100 and \$250, the percentage was 20%; and for bills over \$250, the percentage was 13%. For other business customers, MWCC assessed a "National Access Fee" of \$2.75 per line. MWCC filed a tariff effective April 2, 1998, that changed the business charges so that all business customers, including small businesses, are assessed a \$2.75 per-line charge.

5. On many MWCC customers' bills, the "National Access Fee" is placed in the "Taxes and Surcharge" portion of the invoice.

POSITIONS OF THE PARTIES

Position of the States

6. Based on an inquiry into the business practices of MCIT, the Attorneys General contend that MWCC has violated the provisions of the consumer protection laws of the Participating States in the following ways, among others:

- A. MWCC has falsely represented, either expressly or by implication, that the NAF is a tax or other government mandated fee;

- B. MWCC places its "National Access Fee" in the "Taxes and Surcharge" portion of certain telephone bills, thereby falsely representing, either expressly or by implication, that this fee is a tax or other government mandated fee;
- C. MWCC, through certain Customer Service Representatives ("CSRs"), has misrepresented to certain customers who have inquired about its "National Access Fee" that the charge has been required of all long distance carriers; that its "National Access Fee" is a tax; that the amount of the NAF has been mandated or authorized by Congress; that the amount of the NAF has been mandated or authorized by the FCC; and/or that MWCC has no control over the amount of the NAF; and
- D. On occasion, MWCC, through certain CSRs, has misrepresented to customers, either expressly or by implication, that the amounts being charged by MWCC for the "National Access Fee" equal the PICC charged to MWCC by LECs for the customer's long distance service, when in fact,

the amount billed was more than the actual PICC charged to MWCC for such services and, in some cases, the LECs had not charged any PICC to MWCC.

Position of Respondent

7. MWCC contends that at all times its practices in connection with, among other things, the imposition and explanation of the NAF have been lawful and reasonable. In response to the FCC's Order, and anticipating the need to pass on the PICC charges to its customers, MCIT gave notice of the potential assessment of the PICC to its customers in a tariff filing effective October 10, 1997. In that filing, MCIT stated that it might impose charges on customers to recover amounts it would be required, by government or quasi-governmental authorities, to pay to others in support of statutory or regulatory programs. MCIT specifically identified the PICC as one such program. The FCC did not challenge, suspend or investigate this tariff.

8. The FCC has not required long distance companies to add the PICC to customer telephone bills, nor has the FCC prohibited long distance companies from doing so. Rather, the Commission afforded long distance companies broad latitude to recover from their customers the amounts of the PICC charges levied by the LECs. The FCC offered only general guidelines on how the LECs should bill long distance carriers for PICC charges.

9. In addition to notifying customers and potential customers of the NAF through its tariff (which customers are conclusively presumed to know), MCIT itemized the charges on consumer bills as a National Access Fee. MCIT also inserted the following message in its January 1998 invoices:

The FCC is now requiring MCIT and all other long-distance companies to pay a fee to the local phone companies based on the line subscribed to each carrier for originating and terminating their long distance calls. As a result, MCIT will pass along a subscriber fee to each usage customer.

10. Furthermore, from the outset, MCIT initiated training procedures to educate its CSRs about the NAF. During training, MWCC instructs CSRs that, among other things, the NAF is not a tax, that the amount of the fee has not been mandated or authorized by Congress or

the FCC, and that different long distance carriers have developed different methods to recover the PICC charge.

11. MWCC has assessed a charge to residential customers on a per-account, rather than per-line, basis because MWCC cannot verify whether its lines are classified by the LEC as primary or non-primary and therefore are subject to different PICC rates (by the applicable LEC). This information is in the custody of the LECs; despite extensive efforts to do so, MWCC has not been able to obtain full and complete access to this information.⁷ Thus, MWCC essentially is recovering through the NAF for each of its different customer segments only the amounts that it estimates it must pay the LECs for the PICC for these segments. For example, the \$1.07 per account residential customer NAF charge reflects a weighted average of MWCC's estimate of primary and non-primary residential PICC costs, collection costs associated with this charge, and the costs that MWCC is not recovering from its zero usage customers.⁸ The "National Access Fee" that MWCC charges its residential customers is not based on the number of telephone lines the customer has, but is an estimate of what MWCC must charge each residential customer to recover the PICC charges levied by the LECs.

12. MWCC believes that its approach in assessing the NAF is both fair and reasonable, particularly since it cannot reasonably implement a customer-specific method based on the PICC billing information currently provided by the LECs. As a result, MWCC has carefully calculated estimates of the appropriate NAF charge for its different classifications of customers in an attempt to match the PICC charges it expects to pay the LECs for the year.

13. The Attorneys General acknowledge that MWCC is entering into the AVC solely for the purpose of settlement and nothing contained herein may be taken as, or construed to be, an admission or confession of any violation of law, or any other matter of fact or law, or of any liability or wrongdoing, all of which MWCC has expressly denied. Following extensive evidentiary review and compromise negotiations, and to avoid the expense and uncertainty of protracted litigation, MWCC is entering into this Assurance of Voluntary Compliance ("AVC").

⁷ MWCC has sought this line information directly from the LECs and through FCC proceedings.

NOW, THEREFORE, for the purpose of resolving the contentions of the Parties, MWCC agrees as follows:

REMEDIES/INJUNCTIVE PROVISIONS

14. MWCC shall not:

- A. Place what it currently calls its "National Access Fee" in the taxes and surcharge portion of its customers' telephone bills in all those instances where MWCC directly bills its customers after 60 days from the effective date of the AVC. Currently, all LECs billing customers for MWCC long distance service list MWCC's "National Access Fee" in the "Other Charges" sections of their customer bills. MWCC shall use reasonable efforts to ensure that the LECs continue to place what is currently labeled the "National Access Fee" in that section.

- B. Use the term "National Access Fee" or other like term which has the capacity, tendency, or effect of misleading the consumer that the charge in question is a tax or other government mandated charge after 60 days from the effective date of the AVC.
- C. Represent that MWCC's "National Access Fee" or any like fee or charge being assessed the consumer is linked to what MWCC has to pay (if anything) to the consumer's LEC, if it is not; that the charge is being collected on behalf of or is paid over to the consumer's LEC, if it is not; or that the charge is equal to or is the actual PICC charged to MWCC by a LEC, if it is not.
- D. Represent that other long distance carriers are collecting the same or similar fee or charge as MWCC's "National Access Fee" or the amount of any such fee or charge, if they are not.

15. MWCC agrees to abide by the consumer protection laws of the Participating States in connection with claims and representations that it makes to consumers, which undertaking includes, but is not limited to, representing that MWCC's "National Access Fee" or any like fee or charge is a tax or other government mandated charge, if it is not. Included within this section, but not by any way of limitation, MWCC shall not:

- A. Represent to customers that MWCC's "National Access Fee" or any like fee or charge is authorized or required by the FCC or any other governmental agency, if it is not.
- B. Represent to customers that MWCC is required by the FCC or any other governmental agency to collect this charge, if it is not.

16. As part of such reasonable, good faith efforts, MWCC shall either establish a toll free number to which all questions relating to what is currently labeled the "National Access Fee" shall be routed, or modify its current customer service voice response unit ("VRU") to address this charge. Customers who dial this number or access the VRU shall hear a recording which describes what is currently labeled the "National Access Fee" and shall have the ability to speak with a customer service representative if they desire further information.

17. MWCC has advised the Participating States that it intends to begin using the term "Carrier Access Charge" in place of "National Access Fee" within 60 days from the effective date of this Assurance. The Parties understand that the FCC has opened a docket, FCC 99-72, to review the use of terms for various charges that long distance telephone companies assess consumers. The Participating States agree to defer taking any action against MWCC, pursuant to this AVC, solely based upon MWCC's use of the term "Carrier Access Charge," pending the issuance of guidelines or rules from the FCC in the above-cited docket.

Payment to the States

18. MWCC shall remit, within 15 days of the execution of this AVC, the sum of \$55,000 to each of the Participating States to be used by the Participating States for attorney fees and investigative fees and costs, or for purposes of consumer education, litigation, public protection or local consumer aid funds or other consumer protection purposes pursuant to applicable law, such uses to be at the discretion of each Participating State's Attorney General as allowed by each Participating State's law. This amount is paid in full and final settlement of all fees and costs incurred by the Attorneys General in connection with this AVC.

ADMINISTRATIVE PROVISIONS

19. MWCC understands and agrees that this AVC applies to MWCC, MWCC's principals, officers, directors, agents, employees, representatives, successors and assigns, jointly

ASSURANCE OF VOLUNTARY COMPLIANCE - 7

and severally, while acting personally, or through any corporation or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by MWCC.

20. MWCC shall not represent or imply that the Attorneys General have endorsed MWCC's past business practices, current efforts to reform its practices, or any future practices which MWCC may adopt or consider adopting. The Attorneys General decision to settle this matter or to otherwise unilaterally limit current or future enforcement action does not constitute approval or imply authorization for any past, present, or future business practice.

21. The Participating States shall not institute any civil proceeding or take any civil action relating to the National Access Fee for any acts or omissions occurring between January 1, 1998 and the date of the execution of the AVC, which the Participating States could have raised under the consumer protection statutes listed in footnote one of this AVC, except that the foregoing shall not exclude or limit any and/or all of the Participating States from instituting any investigation and/or bringing any action against MWCC in connection with (1) any of MWCC's advertisements (irrespective of the means of dissemination); or (2) the sale or provisioning of telecommunications service by MWCC to the Participating States, or any of their subdivisions, pursuant to a contract, purchase order or other form of agreement.

22. MWCC agrees and understands that following acceptance of this AVC by the Participating States, their Attorneys General may communicate directly with MWCC for the purpose of executing and enforcing the terms of this AVC, resolving future complaints, and conducting undercover investigations of MWCC to the extent permitted by law.

23. MWCC understands that this AVC may be filed ex parte by some or all of the Attorneys General in the appropriate courts and that some or all of the Attorneys General may request approval of the terms of this AVC. MWCC and the Attorneys General agree to such filings and requests for approval.

24. If payments due under this AVC are not timely made, the Participating States through their Attorneys General may, where applicable, convert the AVC to a money judgment without notice to MWCC. The Parties agree that a copy of the money judgment shall be sent through prepaid, overnight express mail to: Thomas F. O'Neil III, Esquire, Chief Litigation Counsel, MCI WORLDCOM, Inc., 1133 19th Street, N.W., Washington, DC 20036, and Charles

P. Scheeler, Esquire, Piper & Marbury L.L.P., Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201.

25. MWCC understands that, in addition to any other sanctions which may be imposed under this AVC or under the law, violation of any of the terms of this AVC may, where applicable, result in contempt of court proceedings, civil penalties, and such further relief as the courts may deem appropriate. MWCC further understands and acknowledges that this AVC binds any successor(s) in interest of MWCC.

26. This AVC constitutes the entire agreement among the Parties with respect to that set forth herein. Any addition, deletion or change to this AVC must be in writing and signed by all Parties.

27. Nothing contained in this AVC shall be construed to deprive any consumer or other person or entity of any private right under the law.

28. Nothing in this AVC shall be construed as relieving MWCC of the obligation to comply with all state and/or federal laws, regulations, or rules.

29. This AVC shall be effective on the date that it is signed by MWCC ("effective date").

30. This AVC may be signed in counterparts.

31. This AVC shall be governed by the law of the Participating State in which the AVC is executed.

REVIEW BY RESPONDENT MWCC'S ATTORNEY

Approved as to form.



Charles P. Scheeler, Esquire

Piper & Marbury LLP.

*Rudnick Wolfe LLP
CP*

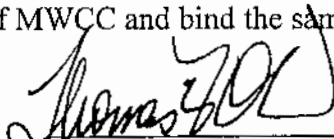
RESPONDENT MWCC'S SIGNATURE AND ACKNOWLEDGMENT

Respondent MWCC has read and understands this AVC and each of its terms.

Respondent agrees to each and every term.

Corporate Respondent

I, Thomas F. O'Neil III, being first duly sworn on oath, depose and say that I am the Chief Litigation Counsel of MWCC and am fully authorized and empowered to sign this Assurance of Voluntary Compliance on behalf of MWCC and bind the same to the terms hereof.



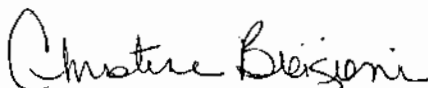
Thomas F. O'Neil III

Chief Litigation Counsel

Senior Vice President

District of Columbia: SS

SUBSCRIBED AND SWORN to before me this 10th day of November, 1999.



Notary Public for the State of _____


Residing at: _____

My Commission Expires: _____

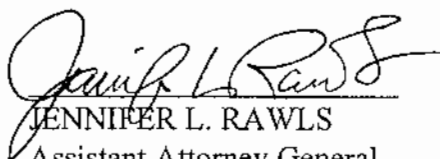
CHRISTINE BIAGIONI
NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES: JULY 14, 2004

ACCEPTANCE BY ATTORNEY GENERAL

Accepted this 10th day of November, 1999.

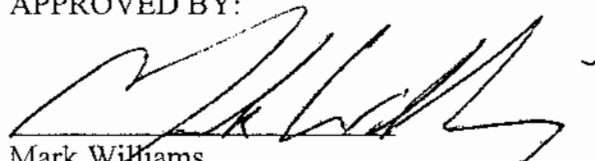


PAUL G. SUMMERS
Attorney General & Reporter
State of Tennessee



JENNIFER L. RAWLS
Assistant Attorney General
Office of the Attorney General & Reporter
State of Tennessee

APPROVED BY:



Mark Williams
Director, Division of Consumer Affairs

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,

Plaintiff,

v.

MCI WORLDCOM
Communications, Inc., a foreign
corporation,

Respondent.

No. 99-3293 H

Petition

FILED
1999 NOV 16 AM 11:07
CLERK OF COURT
DAVIDSON CO. CHANCERY CT.
D.C. & M.

Paul G. Summers, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Insurance and Commerce (hereinafter "the Division") and the Attorney General, acting pursuant to the Act, have investigated the acts and practices of MCI WORLDCOM Communications, Inc. (hereinafter "Respondent"). Upon completion of such investigation, the Division has determined that certain of Respondent's acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-104(a), and further that such acts and practices constitute violations of Tenn. Code Ann. §§ 47-18-104(a), (b)(2) and (b)(27).

2. Based upon their investigation of Respondent, the Division and the Attorney General allege the following:

(A) Beginning in January 1998, pursuant to an Order entered on or about May 16, 1997, the FTC allowed, for the first time, Local Exchange Carriers ("LECs") to charge long distance companies, such as MWCC, a Presubscribed Interexchange Carrier Charge ("PICC") for use of the LECs telephone lines on a per-line bases. The Commission capped the amount LECs

may collect for this charge at \$0.53 per month for a primary line, \$1.50 per month for non-primary residential lines, and \$2.75 per month for a multi-line business line. The PICC is not a tax or other governmentally mandated charge and the FCC has not required long distance companies to add the charge to consumer phone bills.

(B) Beginning in 1998, Respondent initiated and billed its customers a new self-described charge called a "National Access Fee." The fee was set at \$1.07 per month for residential customers. The amount of the monthly charge for businesses was primarily based on the type of account held by the customer and a calculation of the customer's monthly invoice multiplied by a certain multiplier. For example, for small businesses whose bills were between \$0 and \$25, MWCC multiplied the bill by 30% to determine the fee.

(C) In assessing the charge and in representations to consumers, MWCC has falsely represented, either expressly or by implication, that the fee is a tax or other governmentally mandated fee.

(D) MWCC has placed the fee in the "Taxes and Surcharge" portion of certain consumer telephone bills, thereby falsely representing, either expressly or by implication, that this fee is a tax or other governmentally mandated fee.

(E) MWCC, through certain Customer Service Representatives, has misrepresented to certain customers who have inquired about the National Access Fee that the charge has been required of all long distance carriers, that the fee is a tax, that the amount of the fee has been mandated or authorized by the FCC, and/or that MWCC has no control over the amount of the fee.

(F) On occasion, MWCC, through certain Customer Service Representatives, has misrepresented to customers, either expressly or by implication, that the amounts being charged by MWCC for the National Access Fee equal the PICC charged to MWCC by LECs for the customer's long distance service when, in fact, the amount billed was more than the actual PICC charged to MWCC for such services and, in some cases, the LECs had not charged any PICC to MWCC.

(G) Respondent's conduct constitutes an unfair or deceptive act or practice.

3. Respondent denies allegations of Paragraph 2 (c-g).

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of voluntary Compliance in accordance with

the provisions set forth in Tenn. Code Ann. § 47-18-107.

5. The Attorney General entered into negotiations with Respondent and the parties have agreed to, and the Division has approved, the attached Assurance of Voluntary Compliance.

6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

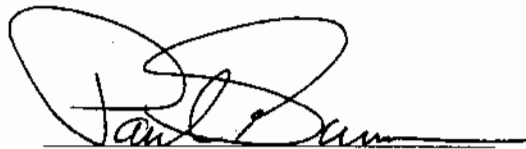
7. The Division, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

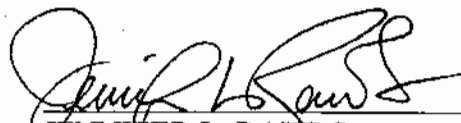
1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Act.

Respectfully submitted,



PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. 6285



JENNIFER L. RAWLS
Assistant Attorney General
B.P.R. No. 13929
Office of the Attorney General & Reporter
Consumer Protection Division
425 5th Avenue North, 2nd Floor
Nashville, Tennessee 37243
(615) 741-2614

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE)

Plaintiff,)

v.)

No. 99-329-I

MCI WORLDCOM)

Communications, Inc., a foreign)
corporation,)

Respondent.)

I hereby certify that this is a true and correct
original instrument filed in my office.

This 16 day of Nov. 1999

CLAUDIA C. [Signature] Clerk & Master

AGREED ORDER

[Signature]
Deputy Clerk

1999 NOV 16 AM 11:08

FILED

This cause came to be heard on the State of Tennessee's Petition and the parties' Assurance of Voluntary Compliance, and the Court is of the opinion that said Assurance of Voluntary Compliance should be approved. It is therefore

ORDERED, ADJUDGED, and DECREED that the Assurance of Voluntary Compliance annexed hereto as Exhibit A and incorporated herein by reference, and hereby made a part of this Order be, and the same hereby is approved, and it is further

ORDERED, ADJUDGED, and DECREED that Respondent shall comply with the terms thereof unless rescinded by the parties or modified by this Court for good cause shown.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED as follows:

(A) Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Agreed Order and the Assurance is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Agreed Order and Assurance, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out

of this Agreed Order and Assurance is solely in the Chancery Court of Davidson County,

Tennessee.

(B) As required in the Assurance and Agreed Order, Respondent shall make a payment to the State of Tennessee in the amount of Fifty-Five Thousand and 00/100 dollars (\$55,000.00).

This payment shall be furnished to the Attorney General within 30 days of the effective date of the Assurance. The payment to the State of Tennessee shall be used for the purposes set forth as follows:

- (1) Respondent shall pay the sum of Forty Thousand and 00/100 Dollars (\$40,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General.
- (2) Respondent shall pay the sum of Fifteen Thousand and 00/100 Dollars (\$15,000.00) to the State of Tennessee as a payment to the General Fund of the State of Tennessee.

(C) Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition, Assurance and Agreed Order.

(D) By entering into the Assurance and Agreed Order, Respondent admits no

wrongdoing and expressly denies that it has engaged in any wrongdoing.

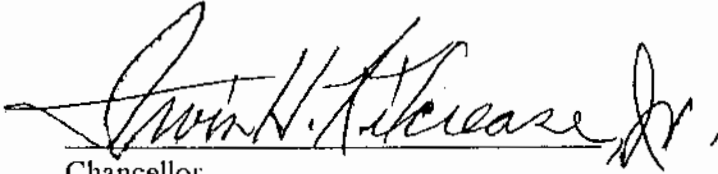
(E) This Agreed Order and the Assurance shall only be enforceable by the parties to this action.

(F) The terms of this Assurance and Agreed Order shall include the following as provided for in Tennessee law:

- (1) Respondent understands that upon execution and filing of this Agreed Order and Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.
- (2) Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

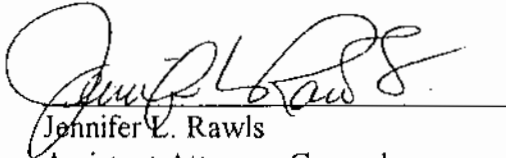
(G) All costs associated with the filing and distribution of this Agreed Order, Assurance and Petition and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Costs shall be taxed to Respondent.

IT IS SO ORDERED.

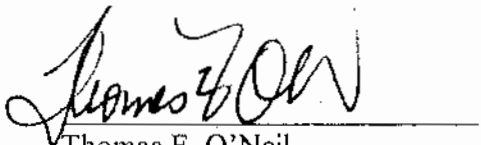

Chancellor

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE STATE:


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Assistant Attorney General
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FOR RESPONDENT:


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Senior Vice President
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Law and Public Policy
1133 19th Street, NW
Washington, DC 20036
202/ 736-6000

(Not admitted in Tennessee)

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